they were harmed by an agency's violation of the Act as set forth in subpart J of this part.

§ 317.97 Cost-benefit analysis.

(a) *Purpose.* The requirement for a cost-benefit analysis by the Act is to assist the agency in determining whether or not to conduct or participate in a matching program. Its application is required in two places: As an agency conclusion in the matching agreement containing the justification and specific estimate of savings; and in the Data Integrity Board review process where it is forwarded as part of the matching proposal. The intent of this requirement is not to create a presumption that when agencies balance individual rights and cost savings, the latter should inevitably prevail. Rather, it is to ensure that sound management practices are followed when agencies use records from Privacy Act systems in matching programs. It is not in the government's interest to engage in matching activities that drain agency resources that could be better spent elsewhere. Agencies should use the cost-benefit requirement as an opportunity to re-examine programs and weed out those that produce only marginal results.

(b) *Cost-benefit analysis.* The agency, when proposing matching programs, must provide the Board with all information which is relevant and necessary to allow the Board to make an informed decision including a cost-benefit analysis. The Defense Data Integrity Board shall not approve any matching agreement unless the Board finds the cost-benefit analysis demonstrates the program is likely to be cost effective.

(1) The Board may waive the cost-benefit analysis requirement if it determines in writing that submission of such an analysis is not required.

(2) If a matching program is required by a specific statute, then a cost-benefit analysis is not required. However, any renegotiation of such a matching agreement shall be accompanied by a cost-benefit analysis. The finding need not be favorable. The intent, in this case, is to provide Congress with information to help it evaluate the effectiveness of statutory matching requirements.

(3) The Board must find that agreements conform to the provisions of the Act and appropriate guidelines, regulations, and statutes.

§ 317.98 Appeals of denials of matching agreements.

(a) *Disapproval by the Board.* If the Defense Data Integrity Board disapproves a matching agreement, a party to the agreement may appeal the disapproval to the Director of the Office of Management and Budget, Washington, DC 20503. Appeals must be made within 30 days after the Defense Data Integrity Board's written disapproval. The appealing party shall submit with its appeal the following:

(1) Copies of all documentation accompanying the initial matching agreement proposal.

(2) A copy of the Defense Data Integrity Board's disapproval and reasons.

(3) Evidence supporting the cost-benefit effectiveness of the match.

(4) Any other relevant information, e.g., timing considerations, public interest served by the match, etc.

(b) *OMB approval.* If the Director of the Office of Management and Budget approves a matching program it will not become effective until 30 days after the Director reports his decision to Congress.

(c) *Recourse by the Inspector General.* If the Defense Data Integrity Board and the Director of the Office of Management and Budget both disapprove a matching program proposed by the Inspector General of the denial agency, the Inspector General may report that disapproval to the head of Department of Defense and to the Congress.

§ 317.99 Proposals for matching programs.

(a) *Who initiates the action.* The recipient DoD component (or the DoD component source agency in a match conducted by a non-Federal agency); or the recipient activity within the DoD component for internal matches, is responsible for reporting the match for

Board approval. The responsible official should contact the other participants to gather the information necessary to make a unified report.

(b) *New or altered matching programs.* Determine if the match is a new program or an existing one. A new match is one for which no public notice has been published in the FEDERAL REGISTER. An altered matching program is an established (published public notice) match with such a significant change that it requires amendment. An altered matching program should not be confused with a request for an unchanged extension of an established program.

(c) *Contents of report (original and one copy).* (1) A proposed new matching program report shall consist of an agency letter of transmittal with the following attached documents:

(i) Completed agreement between the participants.

(ii) Benefit/cost analysis.

(iii) Proposed FEDERAL REGISTER matching notice for public review and comment.

(iv) Copies of all the appropriate forms (e.g., applications) of the participating parties providing direct notice to the individual or any other means of communication used.

(v) Copy or copies of the appropriate FEDERAL REGISTER system(s) of record notice(s) containing an appropriate routine use providing constructive notice to the individual.

(2) A report on a proposed alteration to an established matching program shall consist of an agency letter of transmittal with the following attached documents:

(i) A report containing the significant change(s) and the following additional information:

(A) What alternatives to matching the agencies considered and why a matching program was chosen.

(B) The date the match was approved by each participating Federal agency's Data Integrity Board.

(C) Whether a cost-benefit analysis was required and, if so, whether it projected a favorable ratio.

(ii) Proposed FEDERAL REGISTER matching notice for public review and comment.

(3) A report requesting an extension beyond 18 months of an established unchanged matching program must be received by the Defense Privacy Office, DA&M, at least four months prior to the actual expiration date and consist of an agency letter of transmittal with the following attached:

(i) Justification for the extension (not to exceed one year).

(ii) Certification by the participants that the program has been conducted in compliance with the matching agreement.

(d) *Who receives the reports.* All reports shall be submitted to, and reviewed by, the agency Privacy Advisor and forwarded to the Defense Privacy Office, DA&M, for consideration by the Defense Data Integrity Board.

(e) *Action by the Defense Privacy Office.* The Defense Privacy Office, DA&M, shall present proposals before the Defense Data Integrity Board which shall either approve or disapprove proposals on their merits. Any inaction based on insufficient data, justification, or supporting documentation shall be returned for any further corrective action deemed necessary. Any disapproved proposals are returned with the stated reasons. Board approved proposals are coordinated with the Office of the Assistant Secretary of Defense (Legislative Affairs) and the Office of the General Counsel, Department of Defense. The Defense Privacy Office prepares for the signature of the Chairman of the Board (Director of Administration and Management (DA&M)), transmittal letters sent to Congress and OMB and concurrently submits the proposed FEDERAL REGISTER matching notice for publication.

(f) *Time restrictions on the initiation of new or altered matching programs.* (1) All time periods begin from the date the Chairman of the Board signs the transmittal letters.

(2) At least 30 days must elapse before the matching program may become operational.

(3) The 30 day period for OMB and Congressional review and the 30 day notice and comment period for the Matching Notice may run concurrently.

(g) *Requests for waivers.* The agency may seek waivers of certain matching program requirements including the 30

day review period by OMB and Congress. Requests for waivers shall be included in the letter of transmittal to the report. Such requests shall cite the specific provision for which a waiver is being requested with full justification showing the reasons and the adverse consequences if a waiver is not granted.

(h) *Outside review and activity.* The agency may presume OMB and Congressional concurrence if the review period has run without comment from any reviewer outside the Department of Defense. Under no circumstances shall the matching program be implemented before 30 days have elapsed after publication of the matching notice in the FEDERAL REGISTER. This period cannot be waived.

Subpart J—Enforcement Actions

§ 317.110 Administrative remedies.

An individual who alleges he or she has been affected adversely by a violation of the Privacy Act shall be permitted to seek relief from the Assistant Director, Resources, through proper administrative channels.

§ 317.111 Civil court actions.

After exhausting all administrative remedies, an individual may file suit (5 U.S.C 552a(y)) in the Federal court against the agency for any of the following acts:

(a) *Denial of an amendment request.* The Assistant Director, Resources, or designee refuses the individual's request for review of the initial denial of an amendment or, after review, refuses to amend the record.

(b) *Denial of access.* The agency refuses to allow the individual to review the record or denies his or her request for a copy of the record.

(c) *Failure to meet recordkeeping standards.* The agency fails to maintain the individual's record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual's rights, benefits, or privileges and, in fact, makes an adverse determination based on the record.

(d) *Failure to comply with the Privacy Act.* The agency fails to comply with any other provision of the Privacy Act or any rule or regulation promulgated under the Privacy Act and thereby causes the individual to be adversely affected.

§ 317.112 Criminal penalties.

The Privacy Act (5 U.S.C. 552a(i)) authorizes three criminal penalties against individuals. All three are misdemeanors punishable by fines of $5,000.

(a) *Wrongful disclosure.* Any member or employee of the agency who, by virtue of his or her employment or position, has possession of or access to records and willfully makes a disclosure to anyone not entitled to receive the information.

(b) *Maintaining unauthorized records.* Any member or employee of the agency who willfully maintains a system of records for which a notice has not been published.

(c) *Wrongful requesting or obtaining records.* Any person who knowingly and willfully requests or obtains a record concerning an individual from the agency under false pretenses.

§ 317.113 Litigation status report.

Whenever a civil complaint citing the Privacy Act is filed against the agency in Federal court or whenever criminal charges are brought against an individual in Federal court (including referral to a court-martial) for any offense, the agency shall notify the Defense Privacy Office, DA&M. The litigation status report included in appendix C to this part provides a format for this notification. An initial litigation status report shall be forwarded providing, as a minimum, the information specified. An updated litigation status report shall be sent at each stage of litigation. When the court renders a formal disposition of the case, copies of the court's action, along with the litigation status report reporting the action, shall be sent to the Defense Privacy Office, DA&M.